

# OPEN MEETING



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## MEMORANDUM

Arizona Corporation Commission

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AZ CORP COMMISSION  
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TO: THE COMMISSION

DOCKETED

MAR 14 2014

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FROM: Utilities Division

DATE: March 14, 2014

DOCKETED BY

ORIGINAL

RE: In the Matter of the Application of Montezuma Rimrock Water Company, LLC for Approval of Financing to Install a Water Line from the Well on Tieman to Well No. 1 on Towers; Docket No. W-04254A-12-0204; In the Matter of the Application of Montezuma Rimrock Water Company, LLC for Approval of Financing to Purchase the Well No. 4 Site and the Company Vehicle, Docket No. W-04254A-12-0205; In the Matter of the Application of Montezuma Rimrock Water Company, LLC for Approval of Financing for an 8,000-Gallon Hydro-Pneumatic Tank, Docket No. W-04254A-12-0206; In the Matter of the Rate Application of Montezuma Rimrock Water Company, LLC, Docket No. W-04254A-12-0207; John E. Dougherty, Complainant, V. Montezuma Rimrock Water Company, LLC, Respondent, Docket No. W-04254A-11-0323; In the Matter of the Application of Montezuma Rimrock Water Company, LLC for Approval of a Rate Increase, Docket No. W-04254A-08-0361; and In the Matter of the Application of Montezuma Rimrock Water Company, LLC for Approval of a Rate Increase, Docket No. W-04254A-08-0362.

### Introduction

Montezuma Rimrock Water Company, LLC ("Montezuma" or "Company") is an Arizona public service corporation authorized to provide water service in a community near Rimrock, Az. Montezuma has approximately 205 water customers. On May 31, 2012, the Company filed an application with the Arizona Corporation Commission ("Commission" or "ACC") to increase its rates for water service. The Company also filed three financing applications. The Company subsequently filed several amendments to its rate application, and on April 12, 2013, the Company amended its financing applications.

In Utilities Division Staff's ("Staff") review of the rate application, Staff concluded that Montezuma is not recovering sufficient amounts in rates to cover expenses and support lease payments on the arsenic treatment facility and associated building. Based on a regulatory audit of the Company's finances, Staff recommended an increase in base rates as well as two surcharges for certain planned indebtedness.

Hearings on the base rate application as well as other consolidated dockets were held on June 20-21 and June 24-26, 2013. Final briefs were submitted on September 20, 2013. A Recommended Opinion and Order has not yet been issued.

The Company's arsenic treatment facilities are currently in operation. On December 27, 2013, the Company filed a compliance report indicating that the Company had filed more than one year of arsenic level data and that Montezuma is now in compliance with Arizona Department of Environmental Quality's ("ADEQ") administrative order relating to arsenic.

On March 7, 2014, Montezuma filed a request for emergency/interim rate relief. In its filing, the Company states that it does not have sufficient revenue to make the lease payments on its Arsenic Treatment Facility to the leasing company, Financial Pacific Leasing. On March 13, 2014, the Company docketed a copy of a demand letter from Financial Pacific which stated that an immediate payment of \$2,824.80 is required in order to prevent acceleration of the lease and a demand of payment in full in the amount of \$47,781.92. The Company's filing also indicates that Financial Pacific Leasing has contacted the Company and requested voluntary surrender of the Arsenic Treatment Facility for non-payment.

On March 11, 2014, intervenor John Dougherty filed a response to the Company's application for interim rate relief. Mr. Dougherty's response referred to the three criteria discussed by Attorney General Opinion No. 71-17 to identify an emergency that would justify implementation of rates on an interim basis. Mr. Dougherty does not believe (1) that a sudden change has occurred bringing on financial hardship, (2) that the Company has provided evidence demonstrating its insolvency, and (3) that the Company's ability to maintain adequate service is in doubt. In conclusion, Mr. Dougherty asks the Commission to install an interim manager based on the contention that interim management could access certain grant funds to finance arsenic treatment for Montezuma.

### **Staff Analysis**

Based upon concerns regarding the possible threat to public health and safety presented by the potential loss of arsenic treatment, Staff contacted Financial Pacific to confirm the status of the leasing company's plans regarding the non-payment. Staff spoke with representatives of Financial Pacific. Based upon those discussions, Staff confirmed that Financial Pacific intends to repossess the arsenic treatment facilities in the event that the Company continues nonpayment on the lease. Staff discussed with Financial Pacific the pendency of the base rate application and the recommendations that had been made. Likewise, Staff discussed the possibility of interim rates sufficient to permit Montezuma to bring its account current. Financial Pacific indicated that, if rates are put in place (on an interim basis and followed with permanent rate relief), and if Montezuma's account is made current, it would not pursue remedies unless Montezuma again falls into delinquency.

Staff further inquired as to the lease for the building that houses the arsenic treatment facility. The Company leases the building from Nile River Leasing, L.L.C. On March 13, 2014, the Company provided a statement to Staff indicating that it has an overdue balance of \$2,515.34 as of March 13, 2014.

Total indebtedness to both leasing companies is \$5,340.14. A copy of the statement from Nile River Leasing, L.L.C is attached.

If Financial Pacific were to pursue repossession or other similar remedies, it is possible that such measures could be concluded relatively quickly.

Staff would further note that the evidence adduced at hearing demonstrates that Montezuma's financial condition has effectively precluded essentially all other alternative avenues of financing arsenic treatment at this point. Staff notes that the Company was already authorized to pursue Water Infrastructure Finance Authority of Arizona ("WIFA") financing to fund construction of arsenic treatment. *See* Decision No. 71317 (October 30, 2009). Staff has reviewed the feasibility of financing from WIFA and concluded that, owing to the additional costs of having to meet National Environmental Protection Act compliance, the cost of WIFA financing is prohibitively expensive to both the Company and its ratepayers. Additionally, evidence presented at hearing further indicates that the Company does not currently have sufficient cash flows to obtain a standard loan. Consequently, it is reasonable to conclude that the current lease for arsenic treatment facilities represents the only remaining cost-effective means for Montezuma to obtain arsenic treatment for the drinking water it supplies to its ratepayers.

Additionally, the current state of ADEQ compliance for the Company is contingent upon providing continuous arsenic treatment of its drinking water supplies. Evidence supplied in the hearing on the base rate application illustrates that the Company has narrowly avoided penalties by ADEQ for the lengthy period it took to implement arsenic treatment. The Company may face ADEQ compliance issues if its arsenic treatment equipment were abruptly removed at this point. Such compliance issues could further exacerbate the financial distress confronting the Company.

Financial Pacific is apparently poised to pursue various measures against Montezuma for nonpayment on the arsenic treatment facility lease. Such measures may occur very quickly, providing little time for response. The substantial financial consequences to the Company and, more importantly, the threat to quality of service to ratepayers justify emergency/interim rate relief. Rates collected pursuant to an emergency surcharge would be subject to true-up once permanent rates are approved in Montezuma's application for a base rate increase. Amounts collected beyond what are approved in the base rate case would be subject to refund.

Staff does not believe that the appointment of an interim manager would be appropriate at this time. With regard to the potential to access WIFA grant funds, it is Staff's understanding that the grant funds have been depleted for a number of years.

#### **Staff Recommendations**

Staff recommends approval of an emergency surcharge in the amount of \$10 per customer per month which would provide additional revenues of approximately \$2,000 per month. Staff further recommends that the surcharge should take immediate effect and that the Company should be authorized to do a special billing to accelerate collection of the surcharge. Staff recommends that the Company should be required to post an appropriate bond.


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Further, Staff recommends that the Company be ordered to apply the funds collected under the surcharge solely to payment of the arsenic treatment facility and the associated building leases.

Staff recommends that the matter be brought before the Commission at its earliest convenience in an Open Meeting. Staff will file a proposed form of order for the Commission's consideration.

for   
Steven M. Olea  
Director  
Utilities Division

SMO:GB:sms\CHH

ORIGINATOR: Gerald Becker

# NILE RIVER LEASING, L.L.C.

34037 N. 67TH ST.  
SCOTTSDALE, AZ 85266  
PHONE: 602-549-7654  
FAX: 602-532-7140

**March 14, 2014**

**INVOICE**

## Customer Information

Name: Montezuma Rimrock Water Company Account #: NR-120322  
Address: PO Box 10  
City, State, Zip: Rimrock, AZ 86335  
Phone: 928-592-9211  
Contact: Patricia Olsen

## Equipment Information

Description: 1 - Arsenic Building Plant  
Location: 2126 S. Tombaugh Way  
Flagstaff, AZ 86001

## Payment Information

<u>Payment Due Date</u>	<u>Base Payment</u>	<u>Sales Tax</u>	<u>Late Charge</u>	<u>Total</u>
February 1, 2013	\$0.00	\$0.00	\$34.21	\$34.21
March 1, 2013	\$0.00	\$0.00	\$34.21	\$34.21
April 1, 2013	\$0.00	\$0.00	\$34.21	\$34.21
May 1, 2013	\$0.00	\$0.00	\$34.21	\$34.21
June 1, 2013	\$0.00	\$0.00	\$34.21	\$34.21
July 1, 2013	\$0.00	\$0.00	\$34.21	\$34.21
August 1, 2013	\$0.00	\$0.00	\$34.21	\$34.21
September 1, 2013	\$142.09	\$25.14	\$34.21	\$201.44
October 1, 2013	\$42.09	\$25.14	\$34.21	\$101.44
November 1, 2013	\$342.09	\$25.14	\$34.21	\$401.44
December 1, 2013	\$342.09	\$25.14	\$34.21	\$401.44
January 1, 2014	\$342.09	\$25.14	\$34.21	\$401.44
February 1, 2014	\$342.09	\$25.14	\$34.21	\$401.44
March 1, 2014	\$342.09	\$25.14	\$0.00	\$367.23

**Total Due By 3/1/2014 \$2,515.34**

THANK YOU FOR YOUR PROMPT PAYMENT



# Financial Pacific Leasing®

A subsidiary of Umpqua Bank

3455 S. 344th Way, Ste 300

Federal Way, WA 98001

Phone: 253.568.6000

Fax: 253.568.2222

finpac@finpac.com

www.finpac.com

March 11, 2014

PATRICIA AND GREGORY OLSEN  
MONTEZUMA RIMROCK WATER COMPANY LL  
4599 E GOLDMINE RD  
RIMROCK AZ 86335

RE: Lease #0796680-001 / MONTEZUMA RIMROCK WATER COMPANY LL

PATRICIA AND GREGORY OLSEN;

This letter will serve as notification that Financial Pacific Leasing has not received the past due amount of \$1,654.34. Your failure to respond, forces Financial Pacific Leasing to declare the entire lease payments and all other sums immediately due and payable. The amount due will be \$47,781.92 if the lease is accelerated and Financial Pacific Leasing proceeds with the repossession of the equipment.

If you wish to prevent the acceleration of this lease and remain on a monthly payment arrangement, an immediate payment of \$2,824.80 is required. Your lease is being reviewed for further action at this time due to the seriousness of the delinquency.

Notify Financial Pacific Leasing immediately of your intentions by calling Toll Free 1-877-222-8558, ext 222.

Our acceptance of the above amount or any amounts due under the lease shall not be construed as a waiver of any rights under the lease or any guarantee. The aforementioned amounts will be credited against the entire amount due under the lease.

Sincerely,

Jennifer Bisson  
Collection Department

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